IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13181 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHOKHAR MUSTAFAMIYA MIRUMIYA - Petitioner(s)
Versus
AHMEDABAD MUNICIPAL SCHOOL BOARD & 1 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner(s) : 1,
NANAVATI & NANAVATI for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 12/12/2007

ORAL JUDGMENT

1. Rule. Mr. Mehta for Mr. Nanavati & Nanavati, waives notice of Rule for the respondents.

2. With the consent of the learned advocates appearing for both the sides, the matter is finally heard today.

3. The only question which arises for consideration is as to whether the petitioner is entitled to the reimbursement of the medical expenses based on the decision of this Court dated 03.03.2005 in Special Civil Application No. 8148/04?

4. It is not in dispute that the petitioner is retired as primary teacher of the respondent. As per the petitioner, in the year 2004, the petitioner was required to obtain urgent medical treatment for his ailment at Rajasthan Hospital where the said treatment was undertaken. As per the petitioner, he has incurred expenses for medical treatment of Rs. 1,17,505/- and the papers of the medical treatment and the bills were submitted by the petitioner on 31.05.2004 and thereafter, the petitioner has sent reminders, but there is no disbursement of the amount nor any sanction and therefore, the present petition.

5. Heard Mr.Pujari, learned counsel appearing for the petitioner and Mr. Mehta for Nanavati for the respondent Corporation and the School Board.

6. It appears that as such, the issue is covered by the earlier decision of this Court (Coram:Akil Kureshi, J.) in Special Civil Application

No.8148/04, which was a case of the Municipal School Board Employee and the treatment undertaken at Rajasthan Hospital. The copy of the said decision is also produced at page 59 and in the said decision in the case of Pushpaben I. Mackwan Vs. Municipal School Board, Ahmedabad, in Special Civil Application No. 8148/04 decided on 03.03.2005(Coram:Akil Kureshi, J.), after considering the submission of the learned Advocates appearing for both the sides, observed at para 9 and 10 as under:

"9. Having considered the rival submissions, it is clear that the petitioner had lodged her claim immediately upon her recovery. As noted earlier, the petitioner was released from hospital on 01-03-2000. She sent the necessary papers for claim of reimbursement on 01-04-2000. It is difficult to understand as to how her claim was belated. The petitioner after having applied for medical reimbursement had made series of representations right from June 2000 to November 2003. None of these representations were replied to. It would be most unjust and unequitable to reject a petition of this kind on the ground that the petitioner did not file the petition earlier. The petitioner was constantly representing to the authorities for grant of reimbursement. At no stage her request was formally turned down. I am, therefore, unable to uphold the contention of the counsel for respondent No.1 that the should be dismissed on the ground of delay.

10. With respect to the objection regarding the claim also, I do not find any justification in the stand adopted by the respondents. The petitioner was suffering from serious heart ailment. Due to chest pain, she had to rush to the hospital. Further, investigations revealed that she would need urgent Bypass Surgery which was also performed. When the petitioner is battling for life and struggling to overcome her serious heart ailment and preparing herself for a major heart operation, it is not possible for her first to take permission from the authority before she gets herself properly treated. Under these circumstances, the respondents have not made out a case for denying the claim of the petitioner. It is, therefore, directed that the respondents shall process and sanction the medical reimbursement claim of the petitioner as per the prevalent rates. The same shall be paid over to the petitioner within a period of

> 04 (four) weeks from the date of receipt of a copy of this order. Rule is made absolute to the aforesaid extent. No order as to costs.“

7. Similar are the facts and circumstances of the present case and therefore, no further discussion is required in this regard and the similar direction as such deserves to be issued.

8. However, Mr. Mehta, learned counsel for the respondent contended that as per the policy of the Corporation framed vide Resolution/Circular of the School Board No. 46 dated 26.05.2005, if in emergency, the treatment is undertaken by the employee concerned in other hospital which is approved by the State Government, he would be entitled for reimbursement of the 50% of the amount excluding the room charges and therefore, he submitted that at the most, the petitioner would be entitled for 50% of the amount, whereas, Mr. Pujara, learned counsel appearing for the petitioner, contended that the policy cannot be made effective retrospective since the treatment was undertaken prior to 26.05.2005, the reimbursement is required to be made as per the policy prevailing read with the Judgement of this Court.

9. In my view, since the date of the treatment is of the year 2004 and in any case, prior to the Resolution of the School Board, it will be required for the School Board to give the same

treatment to the case of the petitioner as has been given, to the petitioner of Special Civil Application No.81487/04 and the reason being that the policy cannot be read as having retrospective policy. It may be that the amount might have become due prior to 26.05.2005, but merely because the payment is not made, cannot be a ground for applying the policy with the retrospective effect. Therefore, as the treatment was undertaken in the year 2004, it will be required for th respondent Corporation to reimburse the bill of the petitioner as per the policy prevailing in the year 2004 read with the above referred decision of this Court in the case of Pushpaben I. Mackwan (Supra).

10. In view of the above, the respondents are directed to procees and sanction the medical reimbursement claim of the petitioner as per the prevalent rights then. It is further observed and directed that the petitioner shall be given the same treatment for the purpose of sanctioning of the medical bill and the rights prevailing then as ordered by this Court in the above referred decision in the case of Pushpaben I. Mackwan. The aforesaid exercise shall be completed and appropriate reimbursement shall be made within a period of four weeks from the receipt of the order of this Court.

11. It is also observed that as such the petitioner

was be entitled to the reimbursement well within the time, but since the the direction is given by the present order, in the event, the petitioner is not paid the amount within a period of four weeks pursuant to the aforesaid direction, the respondent Corporation shall additionally pay the interest @ 9% p.a. after the expiry of the said period, until the amount is actually paid.

12. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs. D.S.

(JAYANT PATEL, J.)

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